IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPLICATION NO.151 OF 1997

Commissioner of Income Tax,
Nashik ...Applicant

V/s.

Jai Bhavani Sahakari Sakhar
Karkhana Ltd.
Godhi, Tal.Georai,
Dist.Beed ...Respondents.

Mr.Parag Vyas with A.S.Rao for the Applicant.
Mr.Pramod Vaidya for the Respondent.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 5th July, 2005.

ORAL JUDGMENT: (Per J.H.Bhatia,J.)

1. In this Reference, the Revenue has raised the following questions of law for the opinion of this Court.

> "Whether on the facts and in the circumstances of the case, the ITAT relying on the Special Bench of ITAT Pune's decision in the case of Shri Chhatrapati SSK Ltd. (198 ITR 78-AT), was right in deleting the non refundable deposits of Rs.4,40,695/- by holding that the various funds/deposits are not trading receipt of the assessee as held by the Supreme Court in the case of Bazpur Co-op. Sugar Mills Ltd. reported in 172 ITR 321 and 177 ITR 469 ?"

> "Whether on the facts and in the circumstances of the case the ITAT was right in law in holding that the order u/s 154 passed by the A.O. in view of the Supreme Court's decision in the case of Bazpur Co-op. Sugar Mills Ltd. 172 ITR 321 cannot be sustained though the same was passed before the ITAT, Special Bench, Pune's decision in the case of Shri Chhatrapati SSK Ltd. dated 16/1/1992?"

2. Heard the learned counsel for both the parties. In Commissioner of Income Tax v. Shri Chhatrapati Sahakari Sakhar Karkhana Ltd.(2004) 270 I.T.R. Page 1, the Supreme Court has clearly laid down that in view of the rules obtained in Maharashtra, Non-refundable Deposits collected by the Co-operative Sugar Factories from their members are not the trading receipts, and therefore, such deposits are not liable to be added in the income. The questions raised in the present Reference are fully covered by the aforesaid Supreme Court judgment as also judgment of this Court in Income Tax Appeal No.9 of 1999.

3. In the result, we answer the questions of law in affirmative, that is, in

favour of the Assessee and against the Revenue.

(S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)